IN THE HIGH COURT OF DELHI

Crl.M.C.No.720/2003

C.L.Manchanda ..... Petitioner
! through: Ms. Shobha, Advocate and
Mr. Harish Sharma, Advocate

VERSUS

$ State & Anr. ..... Respondents
^ through: Mr. Anil Soni, Advocate for State.
Mr. Hariharan, Advocate for R-2

RESERVED ON: 17.08.2007

% DATE OF DECISION: 03.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. By this petition under Section 482 of the Code of Criminal Procedure 1973 petitioner is seeking recall of the orders dated 20.12.2002 and 17.1.2003 passed by the learned ACMM, Delhi.

2. Facts in the brief are that complainant Ashok Malik (respondent no.2 herein) filed a complaint against the

petitioner, his father and his wife under Sections 419, 420, 467, 468, 471 and 120 B IPC. (It is to be noted that father of the petitioner has died).

3. Basis of the complaint were the allegations that the accused persons committed the offence of cheating, fraud, forgery and impersonation with an intent to grab the house property of the father of the complainant, Nand Lal Chugh.

4. It was inter alia averred in the complaint that:-

A. Nand Lal Chugh was the owner of the property bearing No. H-229, Jeewan Niketan, Paschim Vihar, New Delhi.

B. With an intent to grab above mentioned property, petitioner C.L.Manchanda fabricated a document called 'business agreement' purported to have been executed at Bihar Sharif, Nalanda, Bihar between the petitioner as the first party and complainant and his father as second party. The document recorded that the petitioner is the owner and in possession of property bearing No. H-229, Jeewan Niketan, Paschim Vihar, New Delhi and had advanced a loan in sum of Rs.30 lacs and handed over the possession of the aforesaid property to the complainant. It was further recorded that towards discharge of his liability complainant would pay a sum of Rs.50,000/- per month to the petitioner as the usage

charges. The terms of the agreement provided for referral of any dispute between the parties to an arbitrator. The signatures of complainant and his father were forged on said document.

C. On the basis of aforenoted forged 'business agreement', arbitration proceedings has been shown to have taken place. Another document namely 'arbitration reference' was fabricated by the petitioner. This document records that the dispute arose between the petitioner and the complainant and thus as per the terms of the aforesaid 'business agreement', a person by the name of Avtar Singh has been pointed as the sole arbitrator. This document has been shown to have been executed on 13.9.1992 and also contains the forged signatures of complainant and his father.

D. At the instance of the petitioner, two persons impersonated the complainant and his father before the so-called arbitrator and gave the statement that they are ready to hand over the possession of the house as also Rs.30 lacs to the petitioner.

E. Thereafter, petitioner submitted another two fabricated documents namely 'special power of attorney' before the so-called arbitrator. These documents were undated

documents and purported to have been executed by the complainant and his father in favour of one Pawan Kumar. These documents records that the complainant and his father had authorized Pawan Kumar to attend arbitration and court proceedings at Bihar Sharif, Bihar and to furnish documents, give statement, receive summons etc.

F. On the basis of aforenoted documents, petitioner obtained an award in his favour from the so-called arbitrator.

G. A vakalatnama was thereafter fabricated by the petitioner. The said vakalatnama is shown to have been executed by the complainant and his father on 15.12.1992 appointing one Sh. Sunil Kumar Sinha as their counsel. The said vakalatnama also contained forged signatures of complainant and his father.

H. On 15.12.1992, petitioner filed an application along with the affidavit of the arbitrator before the Civil Judge, Bihar Sharif, Bihar interalia praying that award of the arbitrator be made rule of the court and passing of the decree in the favour of petitioner.

I. Noting the aforenoted fabricated documents, on 12.2.1993, civil court passed a consent decree against the complainant and his father whereby they were asked to pay

Rs.30 lacs with 18% interest and also hand over possession of house bearing No. H-229, Jeewan Niketan, Paschim Vihar, New Delhi.

J. On 23.7.93, said decree was transferred to court at Delhi for execution and for issue of warrant of attachment.

K. Complainant came to know about said decree and offences of fraud, cheating, forgery and impersonation committed by the petitioner only in August 1994 when warrant of attachment was passed by the court at Delhi.

L. Thereafter, complainant filed the present complaint against the petitioner, wife and father of the petitioner. He also filed an application in the court at Bihar Sharif, Bihar for setting aside said consent decree. The application of the complainant has been registered as M-60/1994 and court after issuing notice has ordered an inquiry as to whether any forgery has been committed by the petitioner.

5. On the basis of complaint, FIR No.16/99 was registered against the petitioner and his wife. Charge sheet was filed under Sections 419,420,467,468,471 and 120 B IPC.

6. An application was filed by the petitioner before learned ACMM seeking discharge. Reasons stated for the discharge were that since the basis of the complaint is that the

petitioner has obtained the consent decree dated 12.2.93 from the civil court, Bihar Sharif by impersonation, forgery of documents and thereby committing fraud upon the court of Civil Judge,Bihar Sharif, Bihar, the learned ACMM, Delhi cannot take cognizance of the complaint in view of the bar contained under Section 195(1)(b)(ii), CrPC 1973. That in view of Section 195(1)(b)(ii) read with Section 340, CrPC, 1973, no court other than the court of Civil Judge, Bihar Sharif has the jurisdiction to take cognizance of the complaint. That court of Civil Judge, Bihar Sharif by ordering an inquiry for investigation of commission of said offences has complied with provisions of Section and thus had already taken cognizance of the matter.

7. Noting that the forgery of the documents was committed before the documents were produced in the court and law laid down by the Supreme Court in Sachidanand Singh & Anr. v State of Bihar & Anr., 1998 CrLJ 1565, vide order dated 20.12.02 learned ACMM dismissed the application of the petitioner.

8. Thereafter, another application was filed by the petitioner before learned ACMM for recall of order dated 20.12.02. Vide order dated 17.1.03, learned ACMM dismissed the said application of the petitioner.

9. Sub-section (1) of Section 195 Cr.P.C., which according to the petitioner, creates a bar in taking cognizance on the complaint filed by the complainant, reads as under :

> **“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.** - (1) No Court shall take cognizance-
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> (a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
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> (ii) of any abetment of, or attempt to commit, such offence, or
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> (iii) of any criminal conspiracy to commit such offence,
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> except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate ;
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> (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
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> (ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
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> (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

10. It is not in dispute that alleged forgery of the documents was committed before the documents were produced in the Court of Civil Judge, Bihar Sharif, Bihar.

11. The principal controversy revolves round the interpretation of the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court" occurring in clause (b)(ii) of sub-section (1) of Section 195 Cr.P.C.

12. This issue was considered by the Supreme Court in the decisions reported as *Surjit Singh vs. Balbir Singh* 1996 (3) SCC 533 and *Sachida Nand Singh vs. State of Bihar* 1998 (2) SCC 493.

13. In *Surjit Singh's* case (supra) it was held that once the document is given in evidence in Court, the taking of cognizance on the basis of private complaint is completely barred.

14. In *Sachida Nand's* case (supra) it was held that bar contained in Section 195 (1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court.

15. In view of conflict of opinion between afore-noted 2 decisions of Supreme Court regarding interpretation of Section 195 (1)(b)(ii) of the Code of Criminal Procedure 1973, a 5 Judge Bench in the decision reported as *Iqbal Singh Marwah and Anr. vs. Meenakshi Marwah & Anr*. 2005 III AD (SC) 489 examined the question in order to end the controversy.

16. In *Iqbal Singh's* case (supra) after analysis of the relevant provisions and noticing a number of earlier decisions, the Supreme Court recorded its conclusion in paragraph 25 which is being reproduced below:-

> "25. In view of the discussion made above, we are of the opinion that **Sachida Nand Singh** has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis."

17. Thus it is no longer res integra that the bar contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure 1973 would not apply where forgery of a document was committed before the said document was produced in Court.

18. In the instant case, the alleged forged document

were produced in the Court of Civil Judge subsequently. It is nobody's case that any offence was as enumerated in Section 195(1)(b)(ii) in respect to said forged documents after it has been produced or filed in the Court of Civil Judge. Therefore, the bar created by Section 195 (1)(b)(ii) of the Code of Criminal Procedure 1973 would not come into play and there is no embargo on the power of the learned ACMM to take cognizance of the offence on the basis of the complaint filed by the complainant. The view taken by the learned ACMM is perfectly correct and calls for no interference.

19. Petition is accordingly dismissed.

20. No costs.

September 3, 2007 PRADEEP NANDRAJOG, J.
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